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3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 19th, 2012**
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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 LLS AMERICA, LLC,

12 Debtor.

No. 09-06194-PCW11

13 _____
14 BRUCE P. KRIEGMAN, solely in
15 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

16 Plaintiff,

Adv. No. 11-80279-PCW

17 vs.

18 OTTO RATFELDER and DIANE
19 RATFELDER,

20 Defendants.
21 _____

MEMORANDUM DECISION RE:
DEFENDANTS OTTO AND DIANE
RATFELDER'S MOTION TO
DISMISS (ECF No. 17)

22 This adversary is one of hundreds commenced by the trustee of the LLS America,
23 LLC ("LLS America") bankruptcy estate which adversaries seek to recover money paid
24 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
25 conducted by the debtor. Defendants Otto and Diane Ratfelder filed a motion to dismiss
26 on December 17, 2011, ECF No. 17.

27 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written
28 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss

MEMORANDUM DECISION RE: . . . - Page 1

1 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of
2 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
3 raised in the subject motion are the same as those raised in the Previous Decision. Many
4 of the facts in the Previous Decision are relevant to the subject motion.

5 By affidavit of Duane Swinton (ECF No. 27), the trustee presented evidence in
6 this case that the defendants loaned or invested \$700,000 (CAN) and \$50,100 (USD) and
7 86 promissory notes were issued. In 1,897 distributions occurring from January 2001 to
8 November 2008, the defendants received \$8,653,134.94 (CAN) and \$650,105 (USD).
9 By declaration (ECF No. 20), the defendants presented evidence that they reside in
10 Canada, rarely travel to the United States, and “virtually all” promissory notes listed a
11 Canadian entity as borrower with distributions primarily made from Canadian entities.
12 The declaration further states that the loans or investments were solicited in Canada, but
13 no details were provided regarding the manner of solicitation.

14 The grounds for dismissal in the subject motion are: (1) ineffective service of
15 process; (2) improper extraterritorial application of United States bankruptcy law; and
16 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
17 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
18 forth in the Previous Decision and is applicable to the subject motion.

19 As in the Previous Decision, one basis for the request to dismiss is the lack of
20 personal jurisdiction. Unlike the situation in the Previous Decision, these defendants did
21 not file a proof of claim in the underlying bankruptcy case of LLS America. These
22 defendants did, however, seek affirmative relief in this adversary. As concluded in the
23 Previous Decision, by filing a motion to withdraw reference of this adversary to the
24 District Court for Eastern District of Washington, the defendants requested a
25 determination whether this court or the District Court had authority to enter final orders
26 in this adversary. That motion sought a ruling on a substantive legal issue. By requesting
27 a ruling on the merits of a legal issue in this case, the defendants have consented to the
28 exercise of jurisdiction by the federal courts of the Eastern District of Washington.

1 The defendants filing the subject motion had sufficient minimum contacts to
2 establish personal jurisdiction. Many of those facts in the Previous Decision are
3 applicable to the defendants in this case. As stated in the Previous Decision and in the
4 court's oral ruling (ECF No. 715) on the Chapter 11 Trustee's Nunc Pro Tunc Motion
5 for Substantive Consolidation of Debtor and Non-Debtor Estates (ECF No. 449) in the
6 underlying LLS America bankruptcy case No. 09-06194-PCW11, the promissory notes
7 generally provided that any one of the group of LLS companies was responsible for
8 repayment. That group of companies was managed and operated in Spokane,
9 Washington. This adversary complaint alleges that the defendants knew or should have
10 known that they were participating in a Ponzi scheme. Unlike the defendants in the
11 Previous Decision, these defendants did not receive commissions, i.e., compensation for
12 soliciting or locating other investors or lenders. However, the economic activity in which
13 the defendants did engage was sufficient to establish minimum contacts for personal
14 jurisdiction. For these reasons, the motion to dismiss is **DENIED**. Counsel for the
15 defendants shall submit an order consistent with this decision.

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17 ///END OF MEMORANDUM DECISION///
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